

COMPLIANCE BOARD OPINION NO. 01-10

June 21, 2001

Ms. Jane Ball Shipley

The Open Meetings Compliance Board has considered your complaint of April 10, 2001, in which you questioned whether the Board of Trustees and the Board of Directors of the Enoch Pratt Free Library complied with the Open Meetings Act at a retreat held on October 20-21, 2000. Your complaint also questioned compliance with the Act by committees of the Board of Directors at their various meetings. For the reasons stated below, the Compliance Board finds that the retreat was held in violation of the Act but that the closed Committee meetings did not violate the Act.

I

Complaint and Response

Your complaint included a copy of the minutes of the October 11, 2000, meeting of the Board of Trustees. These minutes indicate that the presiding officer “discussed the Board Retreat scheduled for October 20-21” This retreat, your complaint suggested, was not conducted in accordance with the Open Meetings Act.¹

Your complaint also referred to various meetings of committees of the Board of Directors, as identified in Board minutes, including monthly meetings of the development committee; a September 14, 2000 meeting of the Finance Committee; a summer 2000 meeting of the Program Committee; and unspecified meetings of the Strategic Planning Committee. Again, your complaint raised the issue whether these meetings were conducted in compliance with the Act.

In a timely response on behalf of the Enoch Pratt Free Library, Marta V. Harting, Esquire, confirmed that the two boards did indeed hold a retreat on October 20-21, 2000. Ms. Harting’s description of the circumstances was as follows:

¹ Your complaint also inquired about Open Meetings Act compliance with respect to any other retreat of either the Board of Trustees or the Board of Directors between October 2000 and the present. According to the response of the Enoch Pratt Free Library, neither Board held a retreat other than the one on October 20-21, 2000.

At that time, many of the members of the Boards were relatively new. The purpose of the retreat was to develop working relationships among the Board members and educate them on long range goals and challenges of the Library. The members of the Boards heard several presentations by senior staff of the Library and outside experts in the field. Time was set aside for Board discussion on the topics of the presentations, and during such discussions, certain topics were identified for further exploration by the Boards.

Attached to the response was a “summary of discussion” at the retreat, which provided additional information about the topics on which presentations were made and discussion held. *See* Part III below. The response noted that the boards “did not vote or take action on any matter at the retreat. All of their discussions related to the overall goals and mission of the Library, and the broad issues it faces.” The response acknowledged that the retreat was not held in open session. The response concluded: “While the necessity of holding the Board retreat as an open meeting may be subject to question, the Board acted in good faith belief that the meeting was not required to be open in view of its educational and social purposes.”

With respect to the meetings of the various committees of the Board of Directors, the Library’s response indicated that only the Finance Committee was created by the bylaws of the Board. Apparently, all of the other committees mentioned in the Board minutes were created less formally.

The Finance Committee, which consists of at least five members of the Board of Directors, is responsible for various financial matters, including in particular “the preparation of the annual operating and capital budgets of the corporation and their submission to the appropriate public agencies.” Bylaws, Article VI, §3. The response contended that meetings of the Finance Committee to carry out this function constitute “an executive function” excluded from the Act. In addition, the response argued that the Finance Committee performed an executive function excluded from the Act when, at a meeting on September 14, 2000, it considered matters related to the investment of endowment funds.

II

Status of Retreat

The Open Meetings Act does not use the term “retreat.” Whether a retreat is subject to the Act is to be analyzed in the same way as any other question about the Act’s application: Was a quorum of a public body convened to consider any phase of a topic of public business subject to the Act? If so, then a retreat is a meeting subject to the Act and may be closed only on the basis of one or more exceptions set forth in §10-508(a) of the State Government Article. The Attorney General has provided contrasting examples of when the Act applies to a retreat and when it does not. “If, for example, the purpose of the retreat is simply to improve interpersonal relations, the Act would not apply. A retreat or similar informal gathering would be a meeting, however, if it were a device to set the public body’s agenda or discuss the merits of specific matters that are to be dealt with by the body.” *Open Meetings Act Manual* 12 (4th ed. 2000).

The two Library Boards are public bodies. *See The Friends of Enoch Pratt Free Library Saint Paul Street Branch v. The Board of Trustees of the Enoch Pratt Free Library*, Case No. 97238001 CC5338, Order of September 18, 1997 (Kaplan, J.); Compliance Board Opinion No. 97-3 (April 16, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 212. Evidently, a quorum of the two Boards was present. Therefore, the determinative issues about the application of the Act to the October retreat are these: Was the entire retreat social in nature, avoiding any conduct of public business? If not, were the topics of public business excluded from the coverage of the Act?

Although some of the activities at the retreat might have been designed primarily to improve interpersonal relations or otherwise involve social matters, rather than public business, it is patently obvious that other aspects of the retreat did include presentations and discussions about matters of public business. For example, the discussion included priority-setting among the various roles that the Library currently plays and the number and type of facilities most suitable for the future of the Library. Consequently, we must consider whether any of the matters of public business that were discussed at the retreat are outside the scope of the Act.

The only possible source of an exclusion would be that for “executive functions.” Because we have so often discussed the executive function exclusion, we shall limit ourselves to a summary of the key points.² A matter is excluded if it involves the implementation of an existing law or policy and, conversely, involves

² Our most recent foray into this area was a lengthy and detailed opinion addressing meetings of the Carroll County Commissioners. Compliance Board Opinion No. 01-7 (May 8, 2001).

no part of the process by which new law or policy is created. The exclusion may not be invoked for any aspect of the policy-making process, including the identification of a matter as ripe for policy consideration, a briefing about a policy-related issue, and staff recommendations on alternatives to be considered.

We are of the view that at least a portion of the retreat concerned policy matters that were not excluded from the Act and that, therefore, presumptively should have been held in open session. Evidently, the first topic of discussion concerned the mission of the Library. According to the summary of discussion at the retreat, after an enumeration of the various roles that the Library currently plays or could play, “there was consensus [that the Library] cannot be all things to all people and must decide which of these roles [is] the most important.” In our view, an identification of the Library’s mission, involving as it does a setting of fundamental priorities, is best viewed as a core policy matter. The making of policy, after all, involves not just the details of a program of actions but also “the set of principles on which they are based.” *Encarta World English Dictionary* 1394 (1999) (definition of “policy”).

It is immaterial that no decisions were made at the retreat. In the absence of an applicable exception, the public was entitled to observe briefings or other preliminary elements of this most fundamental of policy discussions. The Compliance Board finds that the Library Boards violated the Act by holding this discussion in closed session.³

III

Committee Meetings

Based on the information in the Library’s response, we conclude that only the Finance Committee is a “public body” subject to the Open Meetings Act, because only the Finance Committee was created by one of the legal instruments (the bylaws of the Board of Directors) listed in the Act’s definition of this term. §10-502(h)(1)(ii). *See, e.g.* Compliance Board Opinion 99-12 (August 26, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 70.

³ We are unable to render an opinion whether other aspects of the retreat similarly violated the Act. A discussion about library branch operations might have involved the earliest phase in the development of new policy or, conversely, might simply have been an application of existing law and policy. We cannot tell from the summary.

In its meetings, the Finance Committee in part carries out or implements its existing legal responsibility for overseeing the Library's financial and accounting systems and the investment of endowment funds. These activities satisfy the criteria for the executive function exclusion and, consequently, are not subject to the Act.

Likewise, when the Finance Committee carries out its responsibility for "preparation of the annual operating and capital budgets of the [Library] and their submission to the appropriate public agencies [and] the preparation of the annual endowment fund's budget," it is engaged in an executive function. Under the Baltimore City Charter and budget submission ground rules established by the City, the Finance Committee prepares a budget that will ultimately be considered by City authorities. The process regarding the non-city portion of the Library's funding is similar, except that the budget is submitted to the Board of Directors, which considers the proposal at an open meeting. We find that the budget preparation phase of this process, which is the activity engaged in by the Finance Committee, is an executive function. *See Compliance Board Opinion 00-10 (October 18, 2000). Cf. Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595 (1982).

IV

Conclusion

In summary, it is our opinion that the Library Boards violated the Open Meetings Act by conducting in closed session at their retreat on October 20-21, 2000, discussions related to future policy decisions. We further hold that the activities of the Finance Committee did not violate the Open Meetings Act. Finally, we commend the Library for its recent decision "to provide additional education and training to the Boards on the scope and application of the Open Meetings Act." Letter from Marta D. Harting, Esquire (June 11, 2001).

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin
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*Chairman Walter Sondheim, Jr., did not participate in the preparation or approval of this opinion.